

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0460P**

**Individual Income Tax**

**Calendar Year 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

I. **Tax Administration** – Underpayment penalty

**Authority:** IC 6-8.1-10-9(c)

Taxpayer protests the penalty for failure to submit estimated income tax.

**STATEMENT OF FACTS**

The personal representative of the Estate of the deceased filed a written letter of protest on February 26, 1998. Taxpayer died April 10, 1996 and left surviving him his wife. By notice issued January 9, 1998, the Indiana Department of Revenue assessed a penalty of \$2,831.83 for the underpayment of quarterly estimated income tax. The estate paid this amount shortly thereafter and requests a refund.

Prior to his death, on about April 8, 1996, taxpayer paid an estimated tax to the Department toward his 1996 tax. Thereafter, his estate paid \$25,000 in estimated tax on about January 15, 1997. The estate made no estimated tax payments for the taxpayer for June 1996 or September 1996.

I. **Tax Administration** – Underpayment penalty

**DISCUSSION**

At issue is whether the taxpayer is subject to a penalty for failure to pay estimated taxes.

Taxpayer argues the following:

1. **Reasonable Cause** - Taxpayer lived only a little over three months of 1996 and made an

estimated tax payment of \$12,280 just a few days before he died. After his death, an estate was opened for him, and the personal representative was appointed on April 16, 1996. At that time, no one had reason to suspect that taxpayer had earned enough gross income for the short time he lived in 1996 to necessitate any further payment of estimated taxes greater than the amount paid in April 1996. Taxpayer's wife is not employed and did not have substantial income-generating assets of her own at that time.

Not until November 1996 was an accountant able to provide an estimate of potential 1996 income tax liability for the couple. Thereafter, in January 1997, the estate made a \$25,000 estimated tax payment to the Department.

2. **No Requirement to Make Estimated Tax Payments** – Taxpayer states the estate has no requirement to make installment payments of estimated income tax for a decedent. Taxpayer cites an IRS letter Ruling 9102010, October 10, 1990 stating the issue.

The reasoning of the Internal Revenue Service was based on Section 1.6153-1(a)(4) of the Income Tax Regulations that does not require installment payments of estimated income tax after the death of the taxpayer. Indiana and the Department have adopted the federal tax code and regulations of the Service. IC 6-3-1-11(b). Accordingly, the estate was not required to make estimated tax payments for him after his death. The wife's income was insufficient to cause her to make such payments.

In summary, because Federal and adopted State Law do not require an estate to make installment payments of tax for income earned by a decedent before his death and because the personal representative reasonably could not determine that additional tax might be due until several months after the decedent's death, it would be against equity and good conscience to impose a penalty for the underpayment of estimated tax.

The department repudiates the above because it did not assess a penalty for the estate taxes but the failure for the individual to pay estimated income tax on the IT-40. Taxpayer made an estimated payment of \$12,280 for the first quarter of 1996 which should have been followed by ensuing quarters for the same amount. In 1995, taxpayer made an estimated fourth quarter payment of \$40,000. Based upon the 1995 return and the estimated first quarter payment in 1996, taxpayer was aware that at least \$12,280 must be paid for each quarter of the tax year. IC 6-3-4-4 clearly explains the requirements for declarations of estimated tax. The Indiana Code and Regulations have no exemption due to the death of a joint filer. The taxpayer had already known that at least \$12,280 would be due in each quarter. The executor should have made ensuing payments as normal expenses may be paid from the estate. IC 6-3-4-1 requires every resident estate having for the taxable year any gross income from sources within the state of Indiana to file a return.

IC 6-3-4-2(a) states:

If an individual is deceased, the return of such individual shall be made by his executor, administrator, or other person charged with the property of such decedent.

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The joint filer and the estate should have been aware that at least \$12,280 was due each quarter.

**FINDING**

Taxpayer's protest is denied.

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